

**THE INDIANA CIVIL RIGHTS COMMISSION
311 West Washington Street
Indianapolis, Indiana 46204**

**STATE OF INDIANA)
) SS
COUNTY OF MARION)**

**KENNY MINOR,
Complainant,**

DOCKET NO. EMra77120900

vs.

**ZIMMER PAPER PRODUCTS, INC.,
Respondent.**

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

On June 30, 1980, Hearing Officer in the above cause, entered his recommendation. No party has filed objections to that recommendation within the ten (10) day period prescribed by IC 4-22-1-12 and 910 IAC 1-12-1(B).

Being duly advised in the premises, the Commission hereby adopts as its final Findings of Fact, Conclusions of Law, and Order those recommended in the Hearing Officer's Recommended Findings of Fact, Conclusions of Law, and Order, which is attached hereto and incorporated by reference herein.

Dated: February 20, 1981

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Respondent.**

PROPOSED FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

The undersigned Hearing Officer was appointed to hear the above-captioned case and all parties were notified of said appointment by final notice mailed February 27, 1980.

Complainant, Kenneth Minor (hereinafter "Complainant"), was present at that hearing and was represented by counsel, Aaron Haith, 151 N. Delaware Street, 740 Market Square Center Indianapolis IN 46204. Respondent, Zimmer Paper Products (hereinafter "Respondent"), was represented by counsel, Richard E. Parker and Jacqueline A. Simmons, 111 Monument Circle, Indianapolis, IN 46204

Having considered the official record, the evidence admitted at the Hearing, the arguments of counsel, briefs, and proposed Findings of Fact and Conclusions of Law submitted by each, and being duly advised in the premises, the Hearing Officer hereby recommends the entry of the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. Complainant, Kenneth Minor, is a black, male U.S. Citizen.

2. Complainant was employed at Zimmer paper Products continuously from August 1971, until October 17, 1977.
3. Complainant began a pressman apprenticeship program in December 1972, and became a top-rated Pressman in February 1977.
4. Complainant was discharged from his employment with Zimmer Paper Products on October 17, 1977.
5. Complainant filed the complaint in this cause on November 11, 1977, claiming his discharge was due to discrimination because of his race.
6. The Respondent is engaged in the production of flexible packaging materials, including both printing and paper processing equipment. The Respondent's principle plant is located in Indianapolis, Indiana, although Respondent operates one much smaller plant in California.
7. The evidence established that the Pressman's job is the highest paid hourly-rated job in the Respondent's plant.
8. In the last few months of 1975, complainant was sent to Respondent's plant in California to fill in for a Pressman who had a heart attack.
9. There were no problems with Complainant's work while he was in California, and he returned to the Indianapolis plant in December 1975.
10. Complainant's request to remain in California was denied due to the fact that the California plant required an individual who was skilled not only as a Pressman but also could perform the maintenance work necessary on all of the machines in the plant.
11. The Complainant's work record deteriorated following his return from California, during the week of December 21, 1975, Complainant was tardy four out of five times and was tardy two more times in the next three weeks.
12. Complainant received a written reprimand from his foreman, Mike Rice, on January 8, 1976, for tardiness.
13. On September 29, 1976, Complainant was given a ten day disciplinary leave for failing to report to work.

14. The evidence as why Complainant did not report to work on September 28, 1976, is conflicting. Complainant testified that he had personal business he had to attend to, while Respondent's witnesses testified that he had attended a televised professional boxing match.
15. The evidence is not in conflict that Complainant had asked for the evening of September 28, 1976, off work, permission was denied due to the Company's work load, and Complainant did not report to work on September 28, 1976.
16. On January 7, 1977, Complainant received a disciplinary warning for wearing sunglasses on the job.
17. Wearing sunglasses on the job can interfere with a Pressman's duties since he is supposed to watch the ink color very closely.
18. Complainant testified that he wore sunglasses because he was suffering from an eye infection and had had a problem with solvent splashing in his eyes,
19. Complainant further testified that he had requested safety glasses but had been told that he needed a note from a doctor to wear safety glasses.
20. Two of Respondent's witnesses, Gary Scott, a Pressman, and Volney Bunch, the Plant Manager, testified that safety glasses are available to all employees without a doctor's prescription.
21. The evidence is undisputed that Complainant had been verbally warned not to wear sunglasses prior to receiving the written warning.
22. On January 10, 1977, Complainant received a written memo from his foreman, Realus Scott, due to a color variation in three rolls of product that he had run, specifically oleo/margarine wrappers.
23. The Respondent experienced no monetary loss due to this color variation, but was forced to notify the customer of the variance, and was warned by the customer not to let it happen again.
24. Every Pressman has experienced color variations at one time or another, but these variations are to be corrected as soon as noticed rather than running three rolls of paper.
25. Complainant admitted that he knew how to correct such color variations.

26. Complainant did not have as much operating time on the presses as another apprentice, Hollis Smith, but Complainant admitted that this was due to seniority and not race. The Complainant admitted that this was due to seniority and not race. The Complainant admitted that he refused the Company's direction to assist in training Hollis Smith. The evidence establishes that this request was reasonable, and the Complainant's refusal was not reasonable.

27. On June 9, 1977, Complainant received a written warning from his foreman, Realus Scott, for unauthorized absence and tardiness.

28. This warning was given following three separate incidents: on June 3, 1977, Complainant reported to work one hour late and did not call in until twenty five minutes after the shift began; on June 7, 1977, Complainant did not report to work and did not call in until after the shift began; and on June 8, 1977, Complainant arrived at work twenty five minutes late.

29. Complainant gave no explanation as to these tardiness and absence problems.

30. On June 23, 1977, Complainant was given a written memo regarding the printing of a complete order of coffee jar seals the wrong color.

31. Seven hundred pounds of paper were wasted as a result of Complainant's printing the coffee jar seals red rather than orange, resulting in a \$400 loss to the Respondent.

32. On August 11, 1977, Complainant was given a written warning for substandard work and habitual tardiness and was placed on a sixty day probation.

33. This warning resulted from a problem with two rolls of paper, each weighing one thousand pounds, which Minor had laminated improperly by not laminating the paper to within 1/8" of the edge.

34. There was testimony by the Complainant that another Pressman, Gary Scott, had similar problems with lamination.

35. Respondent's witnesses, Gary Scott and Volney Bunch, testified that Scott had experienced problems with lamination only when he was originally setting up the process or when he experienced a glue failure.

36. The evidence as to the dollar amount of loss resulting from this improper lamination was not clear, however, Respondent experienced a loss at least equal to the amount of time necessary to trim the laminated product down to a smaller size so that it would be laminated to the edge.

37. During his sixty day probation, Complainant was tardy five times, absent once and was observed punching another employee's time card in violation of the Respondent's Shop Rules on October 1, 1977.

38. On October 11, 1977, Complainant was given a written warning for punching the time card of another employee.

39. Complainant testified that a white employee, Billy Underwood, punched time cards for other employees, he had been observed by his foreman, and had not been disciplined for this.

40. Billy Underwood was, in fact, given an oral warning for this offense on November 20, 1976, but was not given a written warning due to the fact that his foreman, Ealus Scott, did not see him punch the other employee's time card but merely heard about it.

41. On October 14, 1977, a meeting was held with Complainant; the Union Chapel Chairman, J.W. Hudson; and Volney Bunch, the plant manager, present to review Complainant's progress during the sixty day period.

42. Complainant testified that during this meeting he admitted that he had enough offenses in his work record to be dismissed with just cause.

Complainant upon being questioned by the Hearing Officer in detail concerning the termination memorandum of October 17, 1979, confirmed the accuracy of the facts stated therein. This memorandum is attached hereto and was introduced into the record by Complainant as Complainant's Exhibit 2.

43. Following this meeting, a decision was made to terminate Complainant due to his poor absenteeism and tardiness record, his substandard work, his disobedience of Company rules, and general work record.

44. Complainant was notified of the decision to terminate him on October 17, 1977.

45. Complainant was given one week's severance pay.

46. Complainant filed a grievance with the Union regarding his termination but the grievance was dropped.

47. Complainant's witnesses, Alex Harris and Andrew Holland, testified generally that blacks are discriminated against by Respondent, especially in the areas of enforcement of the tardiness policy and request for time off work.

48. Complainant's witnesses did not provide specific examples of this discrimination other than to note that Mike Prewit and Mike Scott, both white employees, have been absent or tardy on several occasions and were not disciplined to the best of their knowledge.

49. Although Mike Scott reports to work at varying times, he has not been disciplined because a special arrangement exists, whereby he work for both the Respondent and B&B Cartage, the trucking company which transports much of Respondent's new materials and finished products.

50. This agreement among Mike Scott, Respondent, and B&B Cartage has proved very beneficial to Respondent in that it always has a truck available and thus Mike Scott is not considered tardy if he arrives after the normal starting hours due to his work with B&B Cartage.

51. Mike Prewitt's attendance record shows that he has been late on 18 occasions from January through October 1977, while Complainant was late 24 times during that same time period.

52. Mike Prewitt's job as slitter operator is not as crucial as a Pressman's job and it does not cause as many problems for the Respondent if a slitter operator is tardy as it does if a Pressman is tardy.

53. The only other testimony by Complainant or his witnesses regarding specific instances of discriminatory treatment involved an incident in which Gary Scott's time card was signed by his father, Realus Scott, to show him as being at work on time when Gary Scott had forgotten to clock in.

54. Complainant and his witnesses, Harris and Holland, testified that they did not see Gary Scott at work at 3:00 am, his scheduled starting time, but that they later observed that his time card had been signed in with a 3:00 am starting by Realus Scott.

55. Gary Scott testified that he was at work at 3:00 am and further testified that he never called Complainant, as alleged by Complainant, to ask him to punch Gary Scott's time card in at 3:00 am.

56. The evidence establishes that the Complainant's absenteeism and tardiness were substantially worse than other employees in the Press Operator Classification.

57. Any Conclusion of Law which should have been deemed a Finding of fact is hereby adopted as such.

CONCLUSION OF LAW

1. The Commission has jurisdiction over the subject matter and the parties.
2. The Complaint was timely filed.
3. Zimmer Paper Products is a "person" as defined in IC 22-9-1-3(a).
4. Zimmer Paper Products is an "employer" as that term is defined in IC 22-9-1-3(h).
5. The Complainant has failed to sustain his burden of proving that his discharge was due to racial discrimination.
6. The Respondent did not violate the Indiana Civil Rights Act by discriminating against Complainant on the basis of his race.
7. The Complainant is not entitled to back pay award, since the Commission has found that he was not discharged on the basis of his race.

RECOMMENDED ORDER

The Complainant shall take nothing by way of his Complaint and the Complaint of Kenny Minor shall be and hereby is dismissed.

Dated: June 3, 1980